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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1954

No. 689

CHARLES MELTON LEFORS,
*Petitioner,*

v.

THE STATE OF TEXAS,
*Respondent.*

Case No. 26,987, Court of Criminal Appeals
of the State of Texas

## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## SUBJECT INDEX


| | Page |
|---|---|
| Opinions Below | 2 |
| Jurisdiction | 2 |
| Questions Presented | 3 |
| Statement | 3 |
| Argument | 6 |
| Petitioner's Question (a) | 6 |
| Petitioner's Question (b) | 10 |
| Conclusion | 15 |

## INDEX OF AUTHORITIES


| | Page |
|---|---|
| Caldwell v. Texas, 137 U.S. 692 (1891) | 14 |
| Chambers v. Florida, 309 U.S. 227 (1940) | 6 |
| Cooper v. State, 154 Tex. Crim. 182, 226 S.W. 2d 122 (1949) | 7 |
| Dimery v. State, 156 Tex. Crim. 197, 240 S.W. 2d 293 (1951) | 9 |
| In re Duncan, 139 U.S. 449 (1891) | 14 |
| Farrow v. State, 152 Tex. Crim. 595, 216 S.W. 2d 217 (1949) | 7 |
| Gallegos v. Nebraska, 342 U.S. 55 (1951) | 6, 10 |
| Goleman v. State, ..... Tex. Crim. ....., 247 S.W. 2d 119 (1952) | 10 |
| Holt v. State, 151 Tex. Crim. 399, 208 S.W. 2d 643 (1948) | 7 |
| Hooker v. Los Angeles, 188 U.S. 314 (1903) | 14 |
| Hurtado v. California, 110 U.S. 535 (1884) | 13 |
| Leeper v. Texas, 139 U.S. 462 (1891) | 14 |
| Louisville & Nashville Railroad Co. v. Schmidt, 177 U.S. 230 (1900) | 14 |
| Lynch v. New York, 293 U.S. 52 (1934) | 2 |
| Martinez v. State, 151 Tex. Crim. 316, 207 S.W. 2d 387 (1948) | 7 |
| Newsom v. State, 136 Tex. Crim. 114, 123 S.W. 2d 887 (1939) | 11, 12, 13 |
| Pennoyer v. Neff, 95 U.S. 714 (1877) | 14 |
| Picket v. State, 155 Tex. Crim. 195, 228 S.W. 2d 516 (1949) | 7 |
| Prince v. State, 155 Tex. Crim. 108, 231 S.W. 2d 419 (1950) | 7 |
| Rogers v. Peck, 199 U.S. 425 (1905) | 14 |
| Roller v. Holley, 176 U.S. 398 (1899) | 14 |


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Page

Sanchez v. State, 155 Tex. Crim. 364, 235 S.W. 2d 149 (1951) ..... 7

Stembridge v. Georgia, 343 U.S. 541 (1952) ..... 2

Twining v. New Jersey, 211 U.S. 78 (1908) ..... 13, 14

Walker v. Souvient, 92 U.S. 90 (1875) ..... 14

*Statutes*

Article 62, Penal Code (Vernon 1948) ..... 11

28 U.S.C., Section 1257(3) ..... 2

*Constitutional Provisions*

United States Constitution, Fourteenth Amendment ..... 14

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## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Now comes Respondent, The State of Texas, and files this its brief in opposition to the petition for writ of certiorari.

## Opinions Below

The opinions of the Court of Criminal Appeals of the State of Texas in this case are not yet printed. They appear, however, in the Appendix of Petitioner's brief pages 24 through 34.

## Jurisdiction

This Court does not have, nor should it exercise, jurisdiction under 28 U.S.C.A., Section 1257 (3), because:

The decision of the Court of Criminal Appeals of Texas rests upon non-federal grounds which adequately and independently support its holding as will hereinafter appear.

As stated in *Lynch v. New York*, 293 U.S. 52 (1934):

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it."

Furthermore, where it appears that the judgment of the State Court *might** have rested on a non-federal ground, this Court will not take jurisdiction. *Stembridge v. Georgia*, 343 U.S. 541 (1952).

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It is submitted that the Court of Criminal Appeals of Texas in this case did not find it necessary to base its decision on the merits, if any, of a federal claim or claims, if any, but that adequate State grounds existed for final determination of the cause.

## Questions Presented

1. Was Petitioner's confession voluntary and therefore admissible?
2. Was the action of the Court of Criminal Appeals of Texas in finding from its records that Petitioner's previous conviction was final, in violation of the United States Constitution on the basis that Petitioner has not been confronted by his accusers?

## Statement

The Petitioner, Charles Melton LeFors, alias Sonny Lefors, was indicted on October 8th, 1953, for the offense of Felony Theft and Repetition of the same offense under Article 62 of the Penal Code of the State of Texas.

The primary offense was alleged to have been committed on or about the 23rd day of August, 1951, and alleged the theft of certain corporeal personal property from one Marie Ellis; the property alleged to have been taken being a pair of ear rings of the value of $250.00, a ring of the value of $60.00, and $15.00 cash. The prior offense was alleged to have been committed on the 27th day of February, 1940, in Dallas County, and the conviction was alleged to

*Emphasis added throughout.

have been on the 17th day of April, 1940, in the same county. The jury found Petitioner guilty of the offense of felony theft as charged in the indictment and further found that Petitioner had been convicted before of an offense of like character. (Tr. 49.) The court then entered judgment and sentenced Petitioner to a term of ten years in the State Penitentiary as provided by Article 62, Penal Code of the State of Texas. (Tr. 50-51.)

An authenticated copy of the indictment of the 1940 conviction, as well as an authenticated copy of the judgment and sentence in that cause, were introduced in evidence, and it was stipulated by the defense that the defendant presently on trial was the same man who was found guilty in the cause in Dallas County in 1940. (S.F. 1, 2, and 3, State's Ex. No. 1, 321 to 324.)

The facts as disclosed by the evidence adduced on the trial of this case show that Petitioner came to Beaumont in the company of one Neal Aeby and Bob Braggins in the month of August, 1951, for the purpose of "working on a box," meaning to open a safe. (S.F. 274 and 275.) That while they were in Beaumont they wandered into the Princess Night Club for the purpose of having a beer. That they were waited on by the proprietress of the place, one Marie Ellis, the injured party, and that no one else was present in the place except Marie Ellis and Petitioner, along with Neal Aeby and Bob Braggins. (S.F. 5, 276, 286.) While they were talking with Marie Ellis she made a remark that she wished she had what she used to have or how much money she used to have in here cedar chest. (S.F. 7, 276). The

cedar chest was in the same building in the living quarters of the injured party, Marie Ellis. The accomplices, Neal Aeby and Bob Braggins, later lured Marie Ellis to the back of her place so that they could give Petitioner LeFors a chance to look around in the cedar chest. (S.F. 277.) When Marie Ellis, Aeby and Braggins returned from the back end of the place Petitioner, LeFors, was seen to come from the area of Marie Ellis' bedroom in which the cedar chest was located. After the three men left the place Marie Ellis discovered that a pair of diamond earrings, an amethyst ring, and a small amount of money were missing from the purse and cigar box which had been in the aforesaid cedar chest. (S.F. 8.)

In order to establish the guilt of Petitioner, the State relied (1) upon his written confession (S.F. 331-333), (2) the oral confession of Petitioner which was corroborated by the finding of certain articles of the stolen property (S.F. 53-59), (3) the testimony of the accomplice witness, Neal Aeby (S.F. 272-289), and (4) the identification by the injured party, Marie Ellis, of Petitioner as being in her place of business on the day that the property was taken. (S.F. 13.)

Petitioner relied upon the defense of alibi and claimed that he had never been in the place belonging to Marie Ellis, but he did not attempt to establish where he was at the time that the theft was actually committed. He claimed that the written confession was coerced as the result of physical abuse, and that it was not freely and voluntarily given. This issue was controverted by the State and the issue as

to the voluntary nature of the confession was submitted to the jury.

Petitioner brings forward no informal bills of exception.

## Argument

1. Was Petitioner's confession voluntary and therefore admissible? [Petitioner's question (a)]

The test applied by the Court of Criminal Appeals of Texas and the Supreme Court of the United States is to examine the undisputed evidence and determine therefrom if there is any evidence, prior to the confession used herein, which would render the confession inadmissible. *Chambers v. Florida*, 309 U.S. 227 (1940). And since a State court has a better opportunity to appraise conflicting testimony, this Court will give deference to the conclusions of the State court on disputed and essential issues of what actually happened. *Gallegos v. Nebraska*, 342 U.S. 55 (1951).

Bill of Exception No. 2 (Tr. p. 64), is based upon the trial Court's refusal to suppress the written confession introduced by the State in this case. After the State had qualified the person taking the confession and had shown that the same was taken in the manner required by law, Petitioner asked that the jury be retired and that the Court hear evidence on the motion to suppress the said confession. This was done and all of the testimony on the motion to suppress is incorporated in this bill of exception. After hearing the motion and the evidence, the Court allowed the written confession to be introduced as evidence but

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submitted the question of its voluntary nature to the jury under appropriate instructions. (Tr. 42.) It is Petitioner's contention that the evidence adduced on the motion to suppress showed that the confession was inadmissible as a matter of law.

In looking to the bill itself we find that the Petitioner detailed certain alleged cruel treatment on the part of certain officers, and testified that he gave the statement, if he gave it at all, as a result of such physical abuse. Each and every officer named by Petitioner was placed upon the stand by the State and categorically denied any abuse of any nature whatsoever. Thus the Court in his charge to the jury properly submitted the question of the voluntary character of the confession.

If the evidence raises an issue as to the facts necessary to be established to make the confession admissible, for example properly warning the accused, or the voluntary making, such issues are for the jury under appropriate instructions. *Sanchez v. State*, 155 Tex. Crim 364, 235 S.W. 2d 149 (1951); *Prince v. State*, 155 Tex. Crim. 108, 231 S.W. 2d 419 (1950); *Picket v. State*, 155 Tex. Crim. 195, 228 S.W. 2d 516 (1949); *Cooper v. State*, 154 Tex. Crim. 182, 226 S.W. 2d 122 (1949); *Martinez v. State*, 151 Tex. Crim. 316, 207 S.W. 2d 387 (1948); *Farrow v. State*, 152 Tex. Crim. 595, 216 S.W. 2d 217 (1949; *Holt v. State*, 151 Tex. Crim. 399, 208 S.W. 2d 643 (1948).

The facts as adduced by the State's witnesses on which the Petitioner relies as showing that the confession was inadmissible as a matter of law, are as follows: Petitioner was arrested at his place of business in Dallas, Texas, on the night of April 4, 1952,

by a Texas Ranger, a deputy sheriff from Jefferson County, and a city detective from Beaumont, Texas. The arrest was made by virtue of a warrant issued in Jefferson County, Texas, charging the Petitioner with the offense of Felony Theft. When Petitioner was arrested at his place of business in Dallas, Texas, he requested that he be allowed to call the Sheriff of Dallas County, and this request was refused by the officers. The Petitioner was placed under arrest and was placed in the car with the officers who were also carrying another prisoner who had been arrested, and proceeded toward Jefferson County. When they arrived at Woodville, Texas, the home of the Texas Ranger, they parted company and left the Ranger in Woodville and proceeded from there to Newton County, Texas, arriving there in the early morning hours of April 5, 1952. The purpose of taking Petitioner to Newton County rather than proceeding on to Beaumont with him is explained by the officers by showing that they wanted to question the other prisoner that they had with them and that they knew the Sheriff of Newton County had an outstanding warrant for this same defendant. When they arrived at Newton County, Texas, they turned over the prisoner (Petitioner) to the Sheriff of Newton County, Texas. The Sheriff of Newton County questioned Petitioner in reference to an offense committed in that county for approximately two hours after the officers from Jefferson County had left him there in his custody. When he was convinced that Petitioner had nothing to do with the offense committed in his county, he notified the officers from Jefferson County to come and pick him up. The of-

ficers from Jefferson County returned to Newton County during the early morning hours of April 6, 1952, and picked up Petitioner and proceeded on to Beaumont, Jefferson County, Texas, with him. When they arrived in Beaumont, they immediately took him before a magistrate to set his bond in the Jefferson County case. This was on Sunday morning of April 6, 1952. The confession of Petitioner was taken on the morning of April 7, 1952, the following day, by the investigator of the District Attorney's office. It is well to note that even though Petitioner detailed much abuse on the part of the officers, which he claims continued over a period of some 58 days, he does not deny specifically that this confession was taken on April 7th, less than three days after his arrest. In fact, Petitioner claims that although it is his signature on the confession, he does not remember making a confession, nor does he remember signing the same.

Inasmuch as the verdict of the jury constituted a finding that the confession was voluntarily made in accordance with the statutes of this State, Petitioner must show that the facts as a matter of law render the confession inadmissible. The only facts upon which Petitioner can rely as showing that the confession was inadmissible as a matter of law are those which show that Petitioner was not brought directly to Jefferson County, but was taken to Newton County where he was delayed some 24 hours before he was brought on to Jefferson County and then promptly carried before a magistrate.

In *Dimery v. State*, 156 Tex. Crim. 197, 240 S.W. 2d 293 (1951), where the accused was detained in

jail for four days without being taken before a magistrate prior to the taking of the confession, the Court of Criminal Appeals held that the confession was admissible unless it was shown that there existed a causal connection between the arrest and failure to take before a magistrate and the making of the confession. This case received the approval of the Supreme Court of the United States in *Gallegos v. Nebraska, supra.* In *Goleman v. State,* ..... Tex. Crim. ....., 247 S.W. 2d 119 (1952), the Court of Criminal Appeals held that, even though the arrest may have been made without a warrant, there still must be a causal connection between the failure of the officers to secure a warrant and the securing of a confession. In the instant case, the facts show that Petitioner was carried before a magistrate prior to the taking of the confession and was taken before a magistrate immediately upon his arrival in the county out of which the warrant had issued. Certainly there is no causal connection between the taking of the confession and the delay of some 24 hours in Newton County where another warrant was outstanding for the arrest of Petitioner herein. (Tr. 84-230.) Under these facts there is no violation of the Fourteenth Amendment to the United States Constitution.

2. Was the action of the Court of Criminal Appeals of Texas in finding from its records that Petitioner's previous conviction was final, in violation of the United States Constitution on the basis that Petitioner has not been confronted by his accusers? [Petitioner's Question (b).]

It is submitted that Petitioner could not, at the time of trial, offer any evidence in rebuttal as to the finality of his previous conviction. He urges for the first time in his first Motion for Rehearing that the evidence at the trial level was insufficient to show a previous final conviction. That the evidence is sufficient cannot be denied.

In *Newsom v. State,* 136 Tex. Crim. 114, 123 S.W. 2d 887 (1939), the Court of Criminal Appeals held that if the State's evidence shows that the prior judgment relied upon was appealed from, the defendant was relieved of the burden ordinarily resting upon him to show that the prior conviction was not final. The State's evidence herein did not show that the prior judgment was appealed from. A notice of appeal is quite generally a matter of form in all cases, but it does not follow that an appeal is actually perfected, and the judgment can therefore become final without an appeal.

Article 62 of the Penal Code of the State of Texas (Vernon 1948), reads as follows:

> "*If it be shown* on the trial of a felony less than capital that the defendant has been before convicted of the same offense, or one of the same nature, the punishment on such second or other subsequent conviction shall be the highest which is affixed to the commission of such offenses in ordinary cases."

In proving the former conviction relied upon by the Court, the State offered in evidence a certified copy of the sentence in Cause No. 5983(a) in the

Criminal District Court of Dallas County, dated June 22, 1940.

Petitioner in no way rebutted this evidence, nor did he offer to do so.

The Court of Criminal Appeals in taking judicial notice of its own records does not operate to deprive Petitioner herein of any of his constitutional rights. Such judicial notice could have as easily operated in his favor if the conviction had not in fact become final.

The statute calls for the state to *show* that a defendant has previously been convicted, and the sole burden on the State was to establish as an historical fact such a prior conviction.

In the *Newsom* case, *supra*, the Texas Court of Criminal Appeals stated on page 889:

> "The doctrine laid down by the State in its motion for rehearing that it is incumbent on the defendant to show that his previous case has been appealed and reversed is borne out by cases of Tall v. Commonwealth, Ky., 110 S.W. 425, and Gragg v. Commonwealth, Ky., 104 S.W. 285, which hold that such is a matter of defense. We think this is a correct legal proposition."

In the *Newsom* case, the State itself showed that a motion for new trial was filed and overruled, and notice of appeal was given, and that the clerk never prepared a transcript, that the records of his court showed that a notice of appeal was given and that he issued a commitment to the sheriff ordering him to take appellant to the penitentiary, and that he did

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not know what disposition of the case was made by the Texas Court of Criminal Appeals.

The court in the *Newsom* case was concerned with preserving the right of appeal, stating that:

> ". . . the failure of any officer to perform his plain duty cannot deprive a person convicted of crime of his legal right to have this court review the proceedings in his case. Unless such notice of appeal was properly withdrawn, Cause No. 104 should have been presented to this court, at least by transcript showing the proceedings had therein; and the refusal or failure of any officer to perform his duty in connection therewith would not deprive appellant of any of his rights therein."

Petitioner herein had an adequate opportunity at the trial level, having been confronted with evidence, to establish, if he could, that the previous conviction was not final.

In approaching the question of due process, it must be remembered that in our particular dual form of government, nothing is more fundamental than the full power of the State to order its own affairs and govern its own people, except so far as that power has been withdrawn by the Federal Constitution. *Hurtado v. California*, 110 U.S. 535 (1884). This Court may not pass upon the expediency, wisdom, or justice of the laws of the State, but may only determine their conformity with the Federal Constitution. In determining due process this Court may take into account only those fundamental rights which are expressed in that provision. *Twining v. New Jersey*, 211 U.S. 78 (1908). Due process requires that the

Court have jurisdiction, *Pennoyer v. Neff*, 95 U.S. 714 (1877), and that there shall be notice and opportunity for hearing given the parties. *Roller v. Holley*, 176 U.S. 398 (1899). Subject to these two fundamental rules, this Court has sustained all State laws regulating procedure, evidence, and methods of trial as being consistent with due process of law. *Walker v. Sauvinet*, 92 U.S. 90 (1875); *Caldwell v.* Texas, 137 U.S. 692 (1891); *Leeper v. Texas*, 139 U.S. 462 (1891); *In re Duncan*, 139 U.S. 449 (1891), and *Twining v. New Jersey, supra.*

From these decisions it is clear that the Fourteenth Amendment in no way undertakes to control the power of the State to determine by what process legal rights may be asserted, or legal obligations be enforced, provided the method of procedure adopted complies with reasonable notice and affords fair opportunity to be heard. As stated in *Louisville and Nashville Railroad Co. v. Schmidt*, 177 U.S. 230 (1900):

> ". . . It is no longer open to contention that the due process clause of the Fourteenth Amendment to the Constitution of the United States does not control mere forms of procedure in state courts or regulate practice therein. All its requirements are compiled with, provided in the proceedings which are claimed not to have been due process of law the person condemned has had sufficient notice and adequate opportunity has been afforded him to defend; . . ."

See, also, *Hooker v. Los Angeles*, 188 U.S. 314 (1903), and *Rogers v. Peck*, 199 U.S. 425 (1905).

The cases cited by Petitioner on page 16 of his brief are cases descriptive of situations not existing in Petitioner's case herein, as is shown by the undisputed facts.

## Conclusion

For the foregoing reasons the petition for writ of certiorari should be denied.

Respectfully submitted,

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April ....., 1955

A copy of this Reply, together with a copy of the letter of transmittal to the Clerk of the United States Supreme Court, have been mailed this date to Hon. Maury Hughes, (First Class Postage Prepaid). Also Howard Dailey, 522 Davis Bldg., Dallas, Texas.